

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 8, 2002

**Agenda ID #1199**

**TO: PARTIES OF RECORD IN RULEMAKING 00-05-001**

This is the draft decision of Administrative Law Judge Thomas. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

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Carol Brown, Interim Chief  
Administrative Law Judge

CAB: avs

Decision **DRAFT DECISION OF ALJ THOMAS** (Mailed 10/8/2002)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Into  
Implementation of Senate Bill 669, Regarding The  
Deaf and Disabled Telecommunications Program.

Rulemaking 00-05-001  
(Filed May 4, 2000)

**OPINION REGARDING PER DIEM COMPENSATION TO BE  
PAID TO MEMBERS OF SPECIFIC DDTPAC SUBCOMMITTEES**

This decision grants in part and denies in part the Deaf and Disabled Telecommunications Administrative Committee's (DDPTAC) Petition for Modification of Decision (D.) 01-07-012 to allow *per diem* compensation to be paid to members of specific DDTPAC subcommittees.

**1. Background**

The Commission in D.01-07-023 implemented the portion of Senate Bill 669 relating to California's Deaf and Disabled Telecommunications Program (DDTP), and then modified the decision's committee membership and quorum requirements in D.02-01-018.

In this Petition for Modification, the DDPTAC addresses an issue not raised before: compensation for certain subcommittee members. Currently, DDPTAC committee members receive such compensation. However, in a number of instances, the full committee has delegated to subcommittees work related to DDTPAC functions, as follows:

- 1. DDTPAC Transition Task Force:** formed to develop recommendations to the Commission on the administration and governance of the programs specified

- in Pub. Util. Code §§ 2881, 2881.1, and 2881.2, as required by Assembly Bill 1734, which the governor signed on June 20, 2002. Anticipated *per diem* compensation expenses for this Task Force: \$7,500.
2. **Finance Subcommittee:** develops the DDTP's annual budget, reviews the program's annual financial and inventory audits, and develops Request for Proposal (RFPs) for financial services for the program. Anticipated annual *per diem* compensation expenses for this subcommittee: \$2,700.
  3. **Personnel Subcommittee:** review DDTP personnel policies and employee benefit packages, evaluates and sets the compensation of the Executive Director, and handles *ad hoc* grievances. Anticipated annual *per diem* compensation expenses for this subcommittee: \$1,800.
  4. **California Relay Service (CRS) RFP Subcommittee:** formed to develop specifications for RFP to re-bid the CRS contract, in compliance with Commission order. Past and anticipated future *per diem* compensation expenses for this subcommittee: In 2002: \$24,600. In 2003: \$4,800.

In D.01-07-012, we set the *per diem* reimbursement rate for DDTP committees at \$300 per day, with a monthly cap of \$3,000. However, we denied *per diem* compensation to subcommittees.

## 2. Discussion

### A. Commission's *Per Diem* Criteria

We have a well-established policy regarding the payment of per diem compensation to members of boards and committees ("committees"). That policy does not include payment of per diem expenses to subcommittees except in unusual cases. The policy is set forth in D.00-10-028, D.98-07-098, D.98-02-040, D.97-12-105, D.97-12-104, D.97-09-117, and D.97-03-069. The components of this policy are as follows:

- *Per diem* is not paid to committee members who are employees of (1) public utilities, (2) State governmental agencies, or (3) organizations with funding available to support the member's participation in the committee.
- *Per diem* is not paid directly to committee members who are employees of a non-State governmental agencies, trade associations, or community-based organizations. Instead, *per diem* is paid to the member's employer unless the member can show justification for receiving the *per diem*.
- The amount of *per diem* is \$300 for each day of meetings, and \$200 if the meeting lasts for less than approximately two hours. There is no monthly cap on the amount of *per diem*.
- There is no *per diem* for preparation work **or meetings of any subcommittees**.<sup>1</sup>
- Committee members are not eligible to receive intervenor compensation pursuant to Pub. Util. Code § 1801 *et seq.*, for their work related to the committee.
- A Program Manager or equivalent level approves payment of claims for *per diem*.

While we occasionally have allowed limited term *per diem* reimbursement for subcommittees, we have only done so in special circumstances. For example, in D.98-12-085, we allowed such payment as an exception to “our general policy of not creating a *per diem* policy that turns “public service” into “regular employment”:

The decision whether to broaden the circumstances under which an EETAC member can receive compensation hinges on whether we

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<sup>1</sup> D.00-10-028, 2000 Cal. PUC LEXIS 838, \*514; D.98-12-085, 1998 Cal. PUC LEXIS 911, \*59; D.98-07-098, 1998 Cal. PUC LEXIS 663, \*33; D.97-12-104, 1997 Cal. PUC LEXIS 1102, \*27; and D.97-12-105, 1997 Cal. PUC LEXIS 1103, \*33.

believe that subcommittee meetings are a necessary and efficient way for the EETAC to accomplish the numerous tasks facing the Committee in the near term. The proposed plan clarified the kinds of activities that the EETAC subcommittees will be involved in. We believe that these activities are an integral part of creating and implementing an effective CBO-based outreach effort, and may be more effectively and efficiently accomplished by subcommittees rather than full Committee meetings. In recognition of the work to be accomplished, *and for a limited period only*, we will extend the *per diem* and expense reimbursement provisions of D.98-07-098 to Committee attendance at subcommittee meetings that are noticed in accordance with the requirements of the Bagley-Keene Open Meeting Act. We will extend the *per diem* and expense reimbursement provisions to subcommittee meetings until December 31, 1999, unless extended or terminated by further Commission order. *Since it remains our general policy that subcommittees not receive per diem and expense reimbursement*, and since our authorization today is subject to specific conditions and time period limitations, we do not approve a charter amendment to effectuate our order. The charter should remain the same, with this decision permitting the terms of the extended provision.<sup>2</sup>

In all other cases we have examined, we declined to provide compensation for subcommittee work, citing our general policy.

**B. Application of Commission's *Per Diem* Criteria to this Case**

With the exception of the DDTPAC Transition Task Force and the CRS RFP subcommittee, the DDTPAC has made no showing that we should deviate from our general policy. Both the Finance Subcommittee and Personnel Subcommittee carry out ongoing and regular day-to-day functions of the program. There is no showing that these efforts will be time-limited, are part of a special requirement that the DDTPAC must implement, or avoid the risk, cited

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<sup>2</sup> 1998 Cal. PUC Lexis 911, at \*58-59 (emphasis added).

above, of turning public service into regular employment. Therefore, we deny the petition as to these two subcommittees.

As to the other two subcommittees, however, we believe the DDTPAC has made the appropriate showing justifying a change from our ordinary policy. The Transition Task Force was set up to implement specific legislation, and its work will be time limited. It is appropriate that implementation take place in a subcommittee that can educate itself about the particulars of the legislation and its implications. Similarly, the CRS RFP subcommittee was established to implement specific requirements imposed by this Commission. Once again, its work will be time limited and specific to a particular project.

We approve the *per diem* requests of these latter subcommittees with conditions derived from D.01-07-012, and with a time limitation. A Program Manager, or equivalent level, in the Commission's Telecommunications Division, shall approve claims for *per diem* compensation. Funds to pay the *per diem* shall come from the DDTP budget. Future audits of the DDTP should be expanded to include an examination of the veracity and accuracy of claims for *per diem*. The *per diem* compensation will extend no later than June 30, 2003. No retroactive claims will be allowed. Finally, because this allowance is temporary, the DDTPAC should not revise its governing documents to reflect today's decision.

### **3. Comments on Draft Decision**

The draft decision of Administrative Law Judge (ALJ) Thomas in this matter was mailed to the parties in accordance with Public Utilities Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_ and reply comments were filed on \_\_\_\_\_.

#### **4. Assignment of Proceeding**

This matter is assigned to Commissioner Duque and ALJ Thomas.

ALJ Thomas is the presiding officer for this proceeding.

#### **Findings of Fact**

1. The DDTPAC Finance Subcommittee carries out ongoing and regular day-to-day functions of the program that are not unique to the DDTP. This work includes developing the DDTP's budget, reviewing annual financial and inventory audits, and soliciting bids for financial services contracts.

2. The DDTPAC Personnel Subcommittee carries out ongoing and regular day-to-day functions of the program that are not unique to the DDTP. This work includes reviewing DDTP's personnel policies and employee benefit packages, conducting the evaluation and setting the compensation of the DDTP's Executive Director, and handling *ad hoc* grievances.

3. The DDTPAC Transition Task Force exists to implement recent legislation. As such, its functions are not ongoing in nature, and its work will be time limited and specific to a particular project. It is appropriate that implementation take place in a subcommittee that can educate itself about the particulars of the legislation and its implications.

4. The CRS RFP subcommittee was established to implement specific requirements imposed by this Commission. Its work will be time limited and specific to a particular project.

#### **Conclusions of Law**

1. It is this Commission's general policy not to award *per diem* compensation for subcommittee work.

2. On one occasion, the Commission has awarded *per diem* compensation for subcommittee work where the need for the subcommittee was clear and the work was specialized and time limited.

3. It is appropriate to award *per diem* compensation for the DDTPAC Transition Task Force and the CRS RFP subcommittee. Such compensation should be subject to conditions, be time limited, and should not extend beyond June 30, 2003.

4. It is not appropriate to deviate from our ordinary policy in order to award *per diem* compensation for the DDTPAC Finance Subcommittee and Personnel Subcommittee.

5. This order should be effective today.

## O R D E R

### **IT IS ORDERED** that:

1. The members of the Deaf and Disabled Telecommunications Program Administrative Committee (DDTPAC) Transition Task Force (Transition Task Force) and California Relay Service RFP Subcommittee (CRS RFP Subcommittee), may receive *per diem* compensation in accordance with the following conditions. The members of the DDTPAC Finance Subcommittee and Personnel Subcommittee may not receive *per diem* compensation.

2. The Transition Task Force and CRS RFP Subcommittee shall not receive *per diem* if they are employed by (i) a public utility, (ii) State governmental agency, or (iii) organizations with funding available to support the member's participation in the Transition Task Force and/or CRS RFP Subcommittee.

3. For each member of the Transition Task Force and CRS RFP Subcommittee who is an employee of a non-State governmental agency, trade association, or



community-based organization, *per diem* shall be paid to the member's employer unless the member can show justification for receiving the *per diem*.

4. The amount of *per diem* provided to eligible members of the Transition Task Force and CRS RFP Subcommittee shall be \$300 for each day of meetings, and \$200 if the meeting lasts for less than approximately two hours, with a \$3,000 monthly cap on the amount of *per diem*.

5. There shall be no *per diem* for preparation work for meetings of the Transition Task Force and CRS RFP Subcommittee.

6. Members of the Transition Task Force and CRS RFP Subcommittee may receive *per diem* compensation for meetings, including those attended by telephone, provided that such meetings are conducted in accordance with the protocols adopted in prior Commission decisions, including following the notice requirements in the Bagley-Keene Open Meeting Act.

7. Members of the Transition Task Force and CRS RFP Subcommittee shall not be eligible to receive intervenor compensation pursuant to Pub. Util. Code § 1801 *et seq.*, for their work related to these Committees.

8. Claims for *per diem* shall be approved by a Program Manager, or equivalent level, in the Commission's Telecommunications Division.

9. Funds to pay the *per diem* shall come from the Deaf and Disabled Telecommunications Program (DDTP) budget.

10. Future audits of the DDTP shall include an examination of the veracity and accuracy of claims for *per diem*.

11. The *per diem* authorization granted herein shall expire on June 30, 2003.

12. The DDTPAC should not revise its governing documents to reflect today's decision, since the *per diem* authorization expires on June 30, 2003.

13. This decision is not retroactive.

14. The petition to modify Decision 01-07-012 filed by the DDTPAC is granted and denied to the extent set forth in the previous ordering paragraphs.

15. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.